

A Making Authentic Deed of Distribution of Inheritance to Land by a Notary Public

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Abstract. *The making of a certificate of inheritance is carried out by a different official, which is based on the population group, there are three officials who are authorized to make a certificate of inheritance, namely the Notary, the Heritage Hall (BHP), or made by the heirs themselves on paper witnessed by the Head of Village / Village Head and strengthened by the Head District. This writing aims to analyze the process of making authentic deeds of distribution of inheritance of land rights, the obstacles faced by the notary and their solutions. Researchers used legal research methods with a normative juridical approach. The data source came from secondary data. This writing is analyzed qualitatively using the analysis knife of Islamic justice theory, legal certainty theory, and inheritance distribution theory. The results showed that: 1) The process of making an inheritance distribution deed begins with the making of an inheritance certificate (SKW), which is the first step in carrying out the process of distributing inheritance to land in Jepara. The next step is: joint heirs before the notary in the presence of 2 (two) witnesses, bringing the documents that have been determined, the notary checks the files, certificates carried by both parties. The Official for Making Land Deeds (PPAT) makes a will or a certificate of inheritance. The will shall be signed by the heir and the PPAT (made in two copies). 2) PPAT obstacles in the process of distributing inheritance of land rights, namely: legal substance, legal structure, and legal culture. Solutions to obstacles, namely: Consulting and asking for help from government officials in the local village or sub-district. The government needs to disseminate information to the community. Provide information regarding the procedure and procedures for registration as well as incomplete document documents to the applicant.*

Keywords: Authentic Deed; Inheritance; Notary.

1. INTRODUCTION

The law of inheritance can be described as all the rules concerning the replacement of the position of assets which includes the set of activities and liabilities of the deceased.¹Inheritance only occurs when there is a death from the heir. This principle is

¹Mourik, M.J.A Van. 1993. *Studi Kasus Hukum Waris*, Bandung: Eresco, p. 1.

emphasized in the provisions of Article 830 of the Civil Code.²When someone dies, the heirs by law will replace the heir's position as the party with the authority to own or manage the assets left behind. Starting from the death of the heir, based on the provisions of Article 834 of the Civil Code, the beneficiary has the right to control the heir's property (*boedel*) based on his right to be the beneficiary of the heir. This claim is similar to other ownership claims in the sense that the heir can retain rights against anyone / other heirs who have the same claim.³

In practice, the making of an inheritance certificate is carried out by a different official, based on the population group, there are three officials who are authorized to make a certificate of inheritance, namely the Notary, the Heritage Hall (BHP), or made by the heirs themselves on paper witnessed by Head Village / Village Head and strengthened by the Head District. In writing, it discusses the effect of a certificate of inheritance made by a notary. Notary as a public official authorized by the state to make authentic deeds. Meanwhile, the responsibility is to ensure that the deed has perfect evidentiary power, so that the deed must be in accordance with the elements specified in Article 1868 of the Civil Code.

Notary as a general official who represents the State must also act in accordance with the applicable provisions. The authority of a Notary is clearly regulated in Article 15 paragraph (1), (2), (3) Act No. 2 of 2014 concerning Notary Position, while related to Deeds issued by Notaries are strictly regulated in the Civil Code, especially Article 1868 and in Act No. 2 of 2014 on the Position of Notary Public.

Notaries who act beyond their authority in carrying out their duties as stipulated in the law and committing procedural errors in issuing an Authentic Deed will of course result in separate legal sanctions against Notaries in the form of Administrative Law Sanctions, Civil Legal Sanctions and the potential for Criminal Law Sanctions. Inheritance Certificate made by a Notary based on the Classification of Population also has the potential to be null and void by law and / or can be canceled because it is contrary to other applicable laws and is made by an official who is not clearly and expressly regulated by the Law.

In the implementation of the making of the inheritance letter, various problems were found, the creation of a certificate of inheritance which did not provide legal certainty to the heirs, because the basis for making it was weak, so that it was doubtful about the strength of the proof, (being proof of authentic deeds or underhand deeds) In legal theory, several principles apply which function to maintain principle obedience or consistency, resolve conflicts that occur in the legal system and as social engineering, namely *lex superior derogat legi inferiori*: *Lex specyalist derogat legi general*; and *lex posteriori derogat legi priori*.⁴ Making a certificate of inheritance by a notary makes it possible to distinguish when the inheritance statement is problematic. This is because the certificate of inheritance can be stated as an authentic deed because it is made by a notary in accordance with the provisions of the applicable law.

² Kolkman, Wilbert D. *et.al.*(eds), 2012, *Hukum Tentang Orang, Hukum Keluarga Dan Hukum Waris Di Belanda Dan Indonesia*, Denpasar: Pustaka Larasan, p. 147.

³Ibid, p. 148

⁴Mas, Marwan. 2004, *Pengantar Ilmu Hukum*, Bogor: Ghalia Indonesia, p. 112.

Based on the description above, the writer intends to compile the writing of the authentic deed made for the distribution of inheritance by taking the title "Making Authentic Deed of the Distribution of Inheritance to Land by a Notary Public".

Based on the description of the background that has been presented, the authors formulate the following problems:

1. What is the process of making an authentic deed of distribution of inheritance of land rights?
2. What are the obstacles faced by the Notary in making authentic deeds of distribution of inheritance of land rights and the solutions?

2. RESEARCH METHODS

Researchers used legal research methods with a normative juridical approach, the research specification used was descriptive analysis, the data source came from secondary data. Data collection methods are carried out through interviews, library research, and document study. This writing is analyzed qualitatively using the analysis knife of Islamic justice theory, legal certainty theory, and inheritance distribution theory.

3. RESULTS AND DISCUSSION

3.1. The Process of Making Authentic Deeds of the Distribution of Inheritance to Land Rights

Based on Act No. 30 of 2014 concerning Amendments to Act No. 2 of 2004 concerning the Position of Notary Public (UUJN), Article 15 paragraph (1) states that:

"Notaries have the authority to make authentic deeds regarding all deeds, agreements and provisions required by laws and regulations and / or those interested in being stated in the authentic deed, guarantee the certainty of the deed creation date, keep the deed and provide grosse, copy and excerpt of the deed. , all of that, as long as the deeds are drawn up, they are not assigned or excluded from other officials or other people as stipulated by the law. "

The position of Notary Public and PPAT is closely related to the implementation of the distribution of inheritance in a peaceful manner (outside the court / non-litigation) to people who are subject to Western Civil Law (BW) and Muslims who are subject to Islamic law. The transfer of material rights as a result of inheritance is a legal event whose implementation requires evidence showing that the heir is the legal holder to receive the inheritance from the heir. Therefore, evidence must be issued by public officials / government agencies or judicial institutions authorized by law. A notary based on legislation is a public official who has the authority to issue authentic deeds, one of which is the deed of separation and distribution of inheritance.

Based on UUJN, Notary is intended to assist and serve people who need authentic written evidence regarding circumstances, events, or legal actions. Notary as a general official has the authority to make authentic deeds among them regarding all acts and agreements as regulated in Article 15 paragraph (1) of Act No. 2 of 2014 regarding amendments to Act No. 30 of 2004 concerning the position of notary as long as it does not conflict with the elements. -The elements and conditions of the validity of the

agreement in article 1320 of the Civil Code and the legal terms and conditions of the agreement (contract). The valid terms of the agreement based on Article 1320 of the Civil Code, include:

1) Deal

One of the essentials of contract law is their agreement that binds itself or by other names is the principle of consensualism. The principle of consensualism contained in Article 1320 of the Civil Code has the meaning of "willingness" of the parties to bind themselves to one another. The agreement is meant here is the agreement of the will between the parties, namely the meeting between supply and demand.⁵The principle of consensualism can be concluded in Article 1320 paragraph (1) of the Civil Code. In this article it is determined that one of the conditions for the validity of the agreement is the existence of a word of agreement between the two parties. This principle is a principle which states that agreements in general are not formally held, but only with the agreement of both parties. Agreement is the agreement between the will and the statement made by both parties. The principle of consensualism was inspired by Roman law and German law. In German books the term consensualism principle is not known, but it is better known as a real agreement and a formal agreement.⁶

2) Proficiency

The parties who make an agreement must have the ability to take legal actions. everyone who is an adult and is not placed under interdiction, has met the competent criteria. An action in order to have a perfect legal effect, then the person who acts at the time the action is carried out must have maturity to think normally, meaning that he is able to fully realize his actions and the consequences of that action.

3) A certain thing

A certain thing in the terms of the validity of the agreement means that the object of the agreement must be clear and determined by the parties. The object of the agreement can be in the form of goods or services but can also be in the form of not doing something.⁷

4) Because that is lawful

A lawful cause means that the contents of the agreement, the objectives of the agreement to be achieved by the parties are not against the law, do not conflict with public order and do not conflict with decency as stipulated in Article 1337 of the Civil Code. An agreement made without cause or made for false or forbidden causes.

⁵Miru, Ahmadi dan Sakka Pati, (2008), *Hukum Perikatan: Penjelasan Makna Pasal 1233 Sampai 1456 BW*, Cet III, Jakarta: Rajagrafindo Persada, p. 68.

⁶Wiwoho, Jamal dan Anis Mashdurohatun, (2017), *Hukum Kontrak, Ekonomi Syariah dan Etika Bisnis*, Semarang: Undip Press, p. 23

⁷Windari, Ratna Artha, (2014), *Hukum Perjanjian*, Yogyakarta: Graha Ilmu, p. 17.

The valid terms of the agreement as described by the author as a first step in making an agreement and so that the agreement made can be declared valid according to law, it must meet the legal requirements of the agreement as regulated in Article 1320 of the Civil Code.

Based on the notary position law, notaries have the authority to make authentic deeds that have binding power, and have perfect strength if used as evidence. However, if it is not in accordance with the procedures stipulated by law then the legal consequence is that the notary deed only has legal force as an underhand deed and or is null and void, the proof must be proven through a civil lawsuit process in court filed by the party whose name is listed in the deed and suffer losses as a result of the deed. Deeds drawn up before a notary are already regulated in the UUJN. Therefore, in order to be used as evidence, every agreement or engagement should be made in writing.

The steps that will be taken when making a deed to distribute the inheritance of the land rights are as follows:

- 1) The parties (the heirs) together face the notary and are attended by 2 (two) witnesses. Both parties brought documents which were the formal and material conditions that had been determined.
- 2) The notary checks the files obtained from both parties. The PPAT, before making the deed, checks the files of certificates carried by both parties.
- 3) Based on the results of the checking, the Land Deed Making Official makes a will or certificate of inheritance in accordance with the wishes of the heir.
- 4) The will shall be signed by the heir and the PPAT (made in two copies).
- 5) Making the deed of inheritance distribution must be done before the PPAT and witnessed by 2 (two) witnesses.

A will is a letter containing the last wishes of a person which will be carried out if the person dies. The Civil Code regulates wills in Articles 930-953. These articles place great emphasis on the procedure for drafting a will in accordance with the free will of the party making it without being influenced by other people, including notaries. As a rule, a will relates to the assets owned by the testator. The wills that are usually used in the process of distributing inheritance of land rights include:⁸

- 1) General will

Will made by a notary. To do this, the person who will leave the inheritance declares his will in front of a notary, and asks the notary to make a deed in the presence of two witnesses. The author of the will must personally convey his will before witnesses. This cannot be done

⁸ Anita Kamilah dan M. Rendy Aridhayandi, *Kajian Terhadap Penyelesaian Sengketa Pembagian Harta Warisan Atas Tanah Akibat Tidak Dilaksanakannya Wasiat Oleh Ahli Waris Dihubungkan Dengan Buku II Kitab Undang-Undang Hukum Perdata Tentang Benda (Van Zaken)*, Jurnal Wawasan Hukum, Volume 32, Nomor 1, 2015. p.335

with an intermediary for other people, both family members and the notary concerned.

2) Olographic Testament

Wills, which are written entirely by the author, are dated and signed by him, then must be submitted to a notary for safekeeping in his protocol, either open or closed. Next, the notary will make a deposit certificate (deed van depot) in the presence of two witnesses.

3) Secret Testament

A will that he has written himself or someone else who is ordered to write his final will. Then he had to sign the letter himself. This type of testament must be sealed and sealed, then submitted to a notary in the presence of four witnesses. Closing and sealing can also be done in the presence of a notary public and four witnesses.

3.2. Constraints faced by notaries in making authentic deeds of distribution of inheritance to land rights and their solutions

Lawrence M. Friedman in the theory of "Legal System" states that the components of the legal system include three elements, namely:

- 1) The substance of the law (substance rule of the law) includes all written and unwritten rules, both material law and formal law.
- 2) Legal structure (structure of the law), covering legal institutions, legal apparatus and law enforcement systems.
- 3) Legal culture is an emphasis from the side of culture in general, habits, opinions, ways of acting and thinking, which directs social forces in society.

The obstacles faced by the Land Deed Making Officials in the process of distributing inheritance rights in Jepara are attributed to the legal system described by Lawrence Meir Friedman which is classified into two legal components, namely legal substance and legal culture. These constraints are as follows, namely:

1) Legal Substance Constraints

a) Implementation of Making Inheritance Certificate for Bumiputera Residents / Indigenous Indonesian Citizens

The Head Village / Head District as administrative officials should not be able to strengthen the Certificate of Inheritance for a group of residents other than the original Indonesian citizen because the basis still used by the Head of Sub-district / Sub-district is Article 111 PMA / BPN No. 3 of 1997 relating to the land registration process. Inheritance Certificate made by the heirs or their proxies is not made at the last place / domicile of the deceased heirs, but is made at the last domicile of the heirs / proxies.

b) Implementation of Making Inheritance Certificate for Chinese Groups

Presenting not only all the heirs who explained all under oath, also 2 witnesses who were closely related to the heir / deceased or who knew the deceased for a long time even before marriage, who could testify to the truth that the deceased had how many wives and how many. a child, or do not have class one heirs but have natural siblings, and so on, who make a Notary Certificate. From the testimony under oath by the 2 witnesses, the data for the making of a certificate of the right to inheritance is made under hand, but has the power as an official deed from a notary who, based on knowledge in inheritance law, has been able to describe who are the heirs and how many parts. -part.

c) Implementation of Making Inheritance Certificate for Foreign Eastern Groups

The obstacles faced by the *Balai Harta Peninggalan* in the process of issuing this Inheritance Certificate are as follows:

- i. Many of the tappers (heirs of the foreign Eastern class) do not record their marriages so they do not have a marriage certificate, thus requiring an even longer process to obtain a Certificate of Inheritance.
- ii. The location factor of the *Balai Harta Peninggalan* is relatively limited. From the data obtained, the population of foreign-Eastern descent who apply for SKW is more dominated by the population group from the region / region.

2) Legal Structure Constraints in the form of:

- a) There are no rules regarding the standard standard (format) of the Inheritance Certificate that apply to indigenous groups. The standard standard format regarding the Inheritance Certificate for natives is one of the obstacles faced by the Land Deed Authorization Officer when registering the transition to the local Land Office. Editors of the legally correct Inheritance Certificate can be rejected by the local Land Office because it is not in accordance with the applicable regulations at the Land Office. The certificate of inheritance is made at the place where the heir last resides.
- b) Rules regarding provisions requiring the inclusion of the original signatures of the heirs in the preparation of the Certificate of Inheritance and Deed of Sharing of Rights. The requirement to include the original signatures of the heirs in the preparation of the Certificate of Inheritance and the Deed of Sharing Joint Rights. This is an obstacle for the Land Deed Making Official in the process of sharing collective rights in the form of customary land in Jepara.
- c) The rule regarding a complete breakdown system that takes a long time and imposes a lot of taxation fees.

3) Cultural / Cultural Constraints in the form of:

- 1) The Land Office is too rigid in applying the completeness of the requirements. The application of the strict requirements imposed by the Land Office is a separate obstacle for the Land Deed Authorization Officer in managing the process of sharing collective rights in the form of customary land in Jepara.
- 2) It is customary for the Official for Making Land Deeds to order their employees to be witnesses in the making of an inheritance certificate. The making of an inheritance certificate for the indigenous group of the Jepara community is carried out at the KeHead Villagean / Village Head Office and the local District Office. The certificate of inheritance is signed by the village head / village head and sub-district head and witnessed by 2 (two) witnesses who do know the pedigree of the heir.
- 3) The heirs lack legal awareness in completing the requirements for the distribution of inheritance rights. Legal awareness is needed in every legal action.

The solution to the constraints provided by the Notary for the occurrence of obstacles is as follows:

a. Efforts from the community

- 1) Consult and ask for help from government officials in the local sub-district or sub-district, ask neighbors, relatives, or friends who have made a certificate of inheritance and have registered their land.
- 2) The government needs to disseminate information to the community about the process of transferring rights to land, so that in the transfer of land and building rights through APHB, the community can know the procedures as well as the requirements for the APHB process of different religions.

b. Government Apparatus Efforts

Provide information regarding the procedure and procedures for registration as well as incomplete document documents to the applicant.

c. District and Sub-District Offices

Help provide information and complete the documents required by the applicants, as well as monitor the progress of the process in the land office so that it can be completed quickly.

4. CLOSING

The process of making the deed of inheritance distribution begins with the creation of a Certificate of Inheritance (SKW) is the first step in carrying out the process of distributing inheritance rights to land in Jepara. The next steps are as follows: The parties (the heirs) together appear before the notary and are attended by 2 (two) witnesses. Both parties brought documents which were the formal and material conditions that had been determined. The notary checks the files obtained from both parties. The PPAT, before making the deed, checks the certificate files carried by both

parties. Based on the results of the checking, the Land Deed Making Official makes a will or certificate of inheritance in accordance with the wishes of the heir. The will shall be signed by the heir and the PPAT (made in two copies). Making the deed of inheritance distribution must be done before the PPAT and witnessed by 2 (two) witnesses. The obstacles faced by the notary in making authentic deeds for the distribution of inheritance of land rights, namely: legal substance constraints, legal structure constraints, and legal culture constraints. The solution to the obstacles faced by notaries, namely: Consulting and asking for help from government officials in the local village or sub-district, the government needs to disseminate information to the community about the process of transferring land rights Provide information regarding the procedure and procedures for registration as well as incomplete document documents to the applicant. Help provide information and complete the documents required by the applicants, as well as monitor the progress of the process in the land office so that it can be completed quickly.

Land Deed Making Officials are advised to master more customary inheritance law, be more professional in carrying out their duties and be more complete, clear, clear, and thorough in providing legal advice to the heirs (clients). It is hoped that the Notaries will deepen their knowledge in the field of Islamic inheritance law both in theory and practice. Notaries who will make the deed of distribution of Islamic inheritance are expected to be more careful and thorough because even though the deed made is an act of parties, it must pay attention to the provisions in Islamic law in order to achieve benefit, justice, legal protection, and legal certainty.

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